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Module 3

Federal & State Laws for Stormwater Management in Virginia



Clean Water Act (1972)

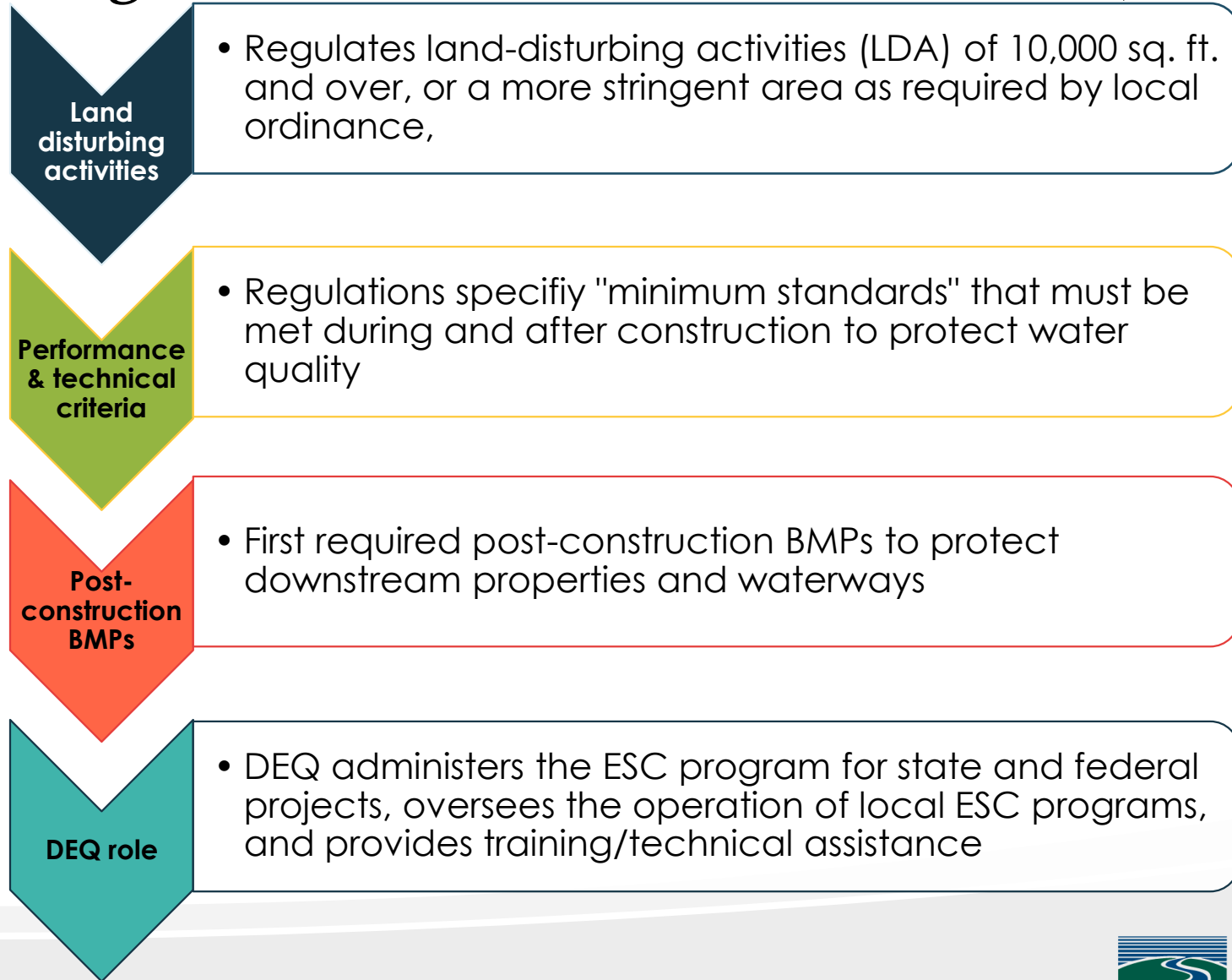


Erosion & Sediment Control (ESC)

“Prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources”



Virginia Erosion & Sediment Control (ESC) **PG 4**



Chesapeake Bay Preservation Act

Protect “the public interest in the Chesapeake Bay, its tributaries, and other state waters”



Chesapeake Bay Preservation Act



Preservation areas

- Local programs must identify and designate certain lands within their jurisdictions that pose a particular threat to water quality if carelessly developed or mismanaged

Nutrient runoff control

- The first requirements for nutrient runoff control in the post-construction phase of a project began in the CBPA

BMPs

- BMPs are required in preservation areas to limit the discharge of phosphorous from a project after construction is complete



Virginia Stormwater Management Act

1989

Required: State
agencies

Optional:
Local
governments

2014

Cities,
counties, and
towns with
MS4 programs
must adopt


Regulated Land-Disturbing Activities (LDA)

Land-Disturbing Activities (LDA)

**≥ 1 acre or part
of a larger
common plan
of
development
or sale ≥ 1 acre**


**$\geq 2,500$ sq. ft. in
Chesapeake
Bay
Preservation
Areas**

**More stringent
area as
required by
local
ordinance**



Definitions (§62.1-44.15:24)

- **VSMP-** A program approved by the Board that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities (LDAs)



Definitions (§62.1-44.15:24)

- **VSMP authority** - An authority approved by the Board to operate a VSMP on July 1, 2014
- May include:
 - Locality
 - State entity
 - Federal entity
 - Linear projects




Further Powers and Duties of the State Water Control Board (§62.1-44.15:25)

- The Board must:
 - Permit, regulate and control stormwater runoff



Further Powers/Duties of the Board (§62.1-44.15:25)

- The Board may:
 - Issue, deny, revoke, terminate, or amend state stormwater individual or general permits
 - Adopt regulations
 - Enforce the Act



Establishment of VSMP


(§62.1-44.15:27)

- Who must adopt a VSMP?

Counties

Cities

Towns
operating
regulated
MS4
programs



Establishment of VSMP


(§62.1-44.15:27)

Assistance
grants

Technical
assistance

Regional
office
assistance


Model
ordinance



Establishment of VSMP

(§62.1-44.15:27)

- What must a locality's VSMP include?
 - Ordinances
 - Program integration
 - VSMP authority permit
 - Consistency
 - Long-term responsibility and maintenance of stormwater management facilities
 - Compliance



Development of Regulations (§62.1-44.15:28)

PG 11

**VSMP administrative
standards and
procedures**


**Plan review and
approval and
inspection
procedures**

**Nonpoint source
pollution, flooding,
stream channel
erosion**

Permit fee schedule

**Long-term
maintenance
requirements**

**Statewide regulated
LDA standards**



Development of Regulations (§62.1-44.15:28)


PG 11

**Post - development
runoff characteristics
and site hydrology**

**Pre-development
runoff characteristics
and site hydrology**



Balance




Development of Regulations (§62.1-44.15:28)

PG 11



Encouraged!

- LID
- Stormwater reuse
- Regional and watershed approaches
- Nonstructural ways to control stormwater



Development of Regulations (§62.1-44.15:28)

PG 11

- Evaluate new stormwater management technologies




Education and training programs (§62.1-44.15:30)

- Certificate of competence
 - Program Administration
 - Plan review
 - Project inspection
 - Combined Administrator



Annual standards and specifications

What	Who Must	Who May	Coverage
Set of standards & specifications approved by DEQ describing how LDA must be conducted	<ul style="list-style-type: none">• State entities• Linear projects<ul style="list-style-type: none">• Electric• Natural gas• Telephone• Railroad	Federal entities	Obtained before the start of LDA 



Annual standards and specifications must include:

- Technical criteria
- Long-term maintenance responsibility
- Project tracking and notification system to DEQ
- ESC and SWM program aspects
- Provisions for certifications/qualifications for ESC and SWM
- Requirements for documenting onsite changes as they occur

Duties of the Department (§62.1—44.15:32)

PG 13

DEQ

Technical
assistance

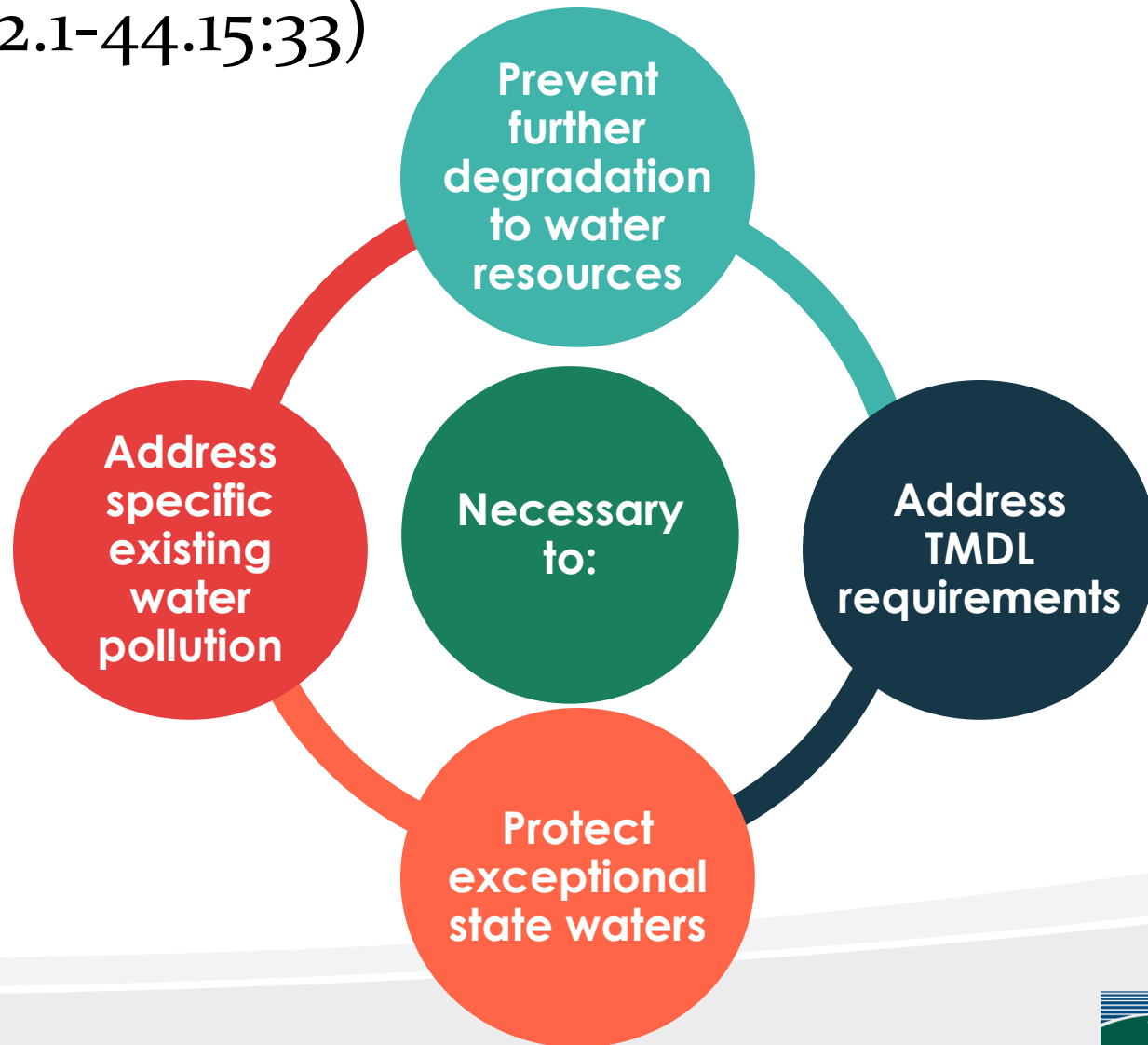
Training

Research
Coordination

Stormwater
management
plan review for
real or potential
inter-
jurisdictional
impacts

Implement the
Act

More Stringent Ordinances (§62.1-44.15:33)




More Stringent Ordinances

(§62.1-44.15:33)


- Locality must submit letter report to the Department within 30 days of adoption of more stringent ordinances
 - Include summary of why the ordinance is necessary
- Department has 90 days to issue determination





More Stringent Ordinances (§62.1-44.15:33)

- Challenging more stringent ordinances
 - Affected landowner or agent has 90 days after adoption of ordinances to request review by DEQ
 - Request submitted to Department, copy of letter sent to locality
 - Locality submits ordinances and supporting materials to Department
 - Department has 90 days to issue a written decision
- Determination or failure to make a determination may be appealed to the Board



More Stringent Ordinances (§62.1-44.15:33)

- Locality may
 - Prohibit board approved BMPs or require more stringent conditions for a specific LDA
 - Prohibitions can be appealed to Department
 - Through ordinance, prohibit use of approved BMPs or require more stringent conditions across its jurisdiction or in a specific geographic area
 - Affected landowner or agent has 90 days to submit a request to Department to review locality's determination



Security for performance (§62.1-44.15:34)

- Prior to approval, the VSMP authority may require an applicant to submit a reasonable performance bond, which **must be refunded within 60 days** of project completion or permit termination




CBPA Land Disturbance Activities (§62.1-44.15:34)

- $\geq 2,500$ sq. ft. in all areas subject to Chesapeake Bay Preservation Act
- July 1, 2014
 - No Construction GP
 - Yes VSMP authority permit


Exemptions (§62.1-44.15:34)





Exemptions (§62.1-44.15:34)

- LDAs < 1 acre, EXCEPT:
 - Chesapeake Bay Preservation Act LDAs
 - LDAs that are part of a larger common plan of development or sale that is ≥ 1 acre

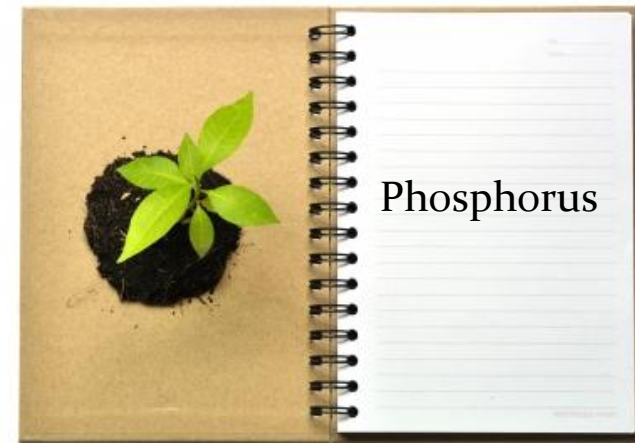


Exemptions (§62.1-44.15:34)

- Single-family residences separately built and disturbing < 1 acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures

Nutrient Credit & Offsite Option (§62.1-44.15:35)

- VSMP authority is authorized to allow compliance with the water quality criteria through the use of nutrient credits in the same tributary
- Nutrient credits cannot be used to address water quantity control requirements, nor can they be used in violation of quality based limits



< 5-acres
of land will
be
disturbed;
or

Post-
construction
P control
requirement
is < 10
lbs/year; **or**

State permit applicant
demonstrates to the
satisfaction of the VSMP
authority all of the following:

**Alternative site
designs have
been
considered that
may
accommodate
onsite best
management
practices**

**Onsite BMPS
have been
considered in
alternative site
designs to the
extent
practicable**

**Appropriate
onsite best
management
practices will
be
implemented**

**Full
compliance
with post-
development
nonpoint
nutrient runoff
compliance
requirements
cannot
practicably be
met onsite**



If applicant demonstrates onsite control of at least 75% of the required phosphorous nutrient reductions, the applicant shall be deemed to have met the 4 requirements just listed

Inspections, Monitoring, and Reports (§62.1-44.15:37)

- VSMP authority must periodically inspect installation of stormwater management measures
- May require monitoring and reports





Notice to Comply (§62.1-44.15:37)

- Failure to comply with permit conditions
 - Notice shall be served upon permittee or person responsible for carrying out the permit conditions by registered or certified mail or at the development
 - Specifies measures needed to comply with the permit conditions and time they be completed



Stop Work Order (§62.1-44.15:37)




- Permittee fails to comply with a notice within the time specified
 - Requires all LDAs stop until permit violation or corrective measures have been resolved
- Issued
 - In accordance with local procedures if issued by a locality VSMP authority
 - After a hearing held in accordance with the requirements of the Administrative Process Act if issued by the Department




Department Review (§62.1-44.15:38)

- Every five years
- Coordinated with reviews of local ESC and Chesapeake Bay Preservation Act programs conducted by DEQ
- Include an assessment of the extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects of localized flooding



Right of Entry (§62.1-44.15:39)


- Done under reasonable times and reasonable circumstances



Penalties, injunctions, and other legal actions (§ 62.1-44.15:48)

Civil action


- Violates
 - Act
 - Regulations
 - Local ordinances
 - Standards and specifications
- Fails, neglects, refuses to comply with order of
 - VSMP authority
 - Department
 - Board
 - Court



Penalties, injunctions, and other legal actions (§ 62.1-44.15:48)

Civil action

- Penalty
 - \leq \$32,500 for each violation within discretion of court
 - Each day of violation is a separate offense



Penalties, injunctions, and other legal actions (§ 62.1-44.15:48)

Civil action

- Summons for collection of civil penalty
 - Board
 - Department
 - VSMP authority
- Actions on behalf of the Board or Department are brought by the VA Attorney General's Office

Penalties, injunctions, and other legal actions (§ 62.1-44.15:48)

Civil action



Locality
treasury where
violation
occurred

Civil penalty assessed
for locality VSMP
authority summons


Penalties, injunctions, and other legal actions (§ 62.1-44.15:48)

Civil action



VA SWM Fund


Civil penalty assessed for Board or Department summons when locality or its agent is violator



Penalties, injunctions, and other legal actions (§ 62.1-44.15:48)

Consent orders

- Violated or failed, neglected, or refused to obey
 - Act
 - Ordinance
 - Permit conditions
 - Regulations
 - Order of Board, Department, VSMP authority



Penalties, injunctions, and other legal actions (§ 62.1-44.15:48)

Consent orders

- Civil charge
 - ≤ \$32,500 for each violation



Penalties, injunctions, legal actions (§ 62.1-44.15:48)

Misdemeanor

Behavior	Punishment Individuals	Punishment Non individuals
Willfully or negligently violates: <ul style="list-style-type: none">•VSMA•Regulations•Order•Permit• Ordinance	Jail for up to 12 months and/or fine between \$2,500 and \$32,500	Fine \geq \$10,000

Felony

Behavior	Punishment Individuals	Punishment Non individuals
Knowingly violates: <ul style="list-style-type: none">•VSMA• Regulations• Order• Permit• Ordinance	Imprisonment 1-3 years and \$5,000 - \$50,000 fine	Fine \geq \$10,000
Knowingly makes a false statement in required form		
Knowingly renders inaccurate a monitoring device or method		

Felony

Behavior	Punishment Individuals	Punishment Non individuals
Knowingly violates provision of VSMA and knows at the time they are placing another person in imminent danger or death or serious bodily harm	Imprisonment 2-15 years and/or fine up to \$250,000 Maximum fine and imprisonment doubled for subsequent convictions of same person	Fine up to the greater of \$1 million or 3x economic benefit as a result of the offense Maximum fine and imprisonment doubled for subsequent convictions of same non individual



Knowledge Check

- With respect to stormwater runoff, the Code of Virginia requires the Board to:

A. Permit

B. Regulate

C. Control

D. All of the above



Knowledge Check

- True or False. Localities may adopt more stringent ordinances if they are necessary to address TMDL requirements or depleted ground water resources.

A. True

B. False



Knowledge Check

- Which of the following statements is false with respect to technical criteria and administrative procedures for VSMPs?
 - A. Establish a permit fee schedule
 - B. Provide for the evaluation of innovative technologies
 - C. Discourage the use of LID design
 - D. Establish provisions for the long term maintenance of SWM control devices



Knowledge Check

- The Department may invoke civil penalties not to exceed?

A. \$25,00/day

B. \$32,500/violation

C. \$100,000/annually



Knowledge Check

- The VSMP authority must act on any permit application within what time frame?
 - A. 30 days after it has determined the final application is complete
 - B. Before the first snowfall
 - C. 45 days before the bond is posted
 - D. 60 days after it has determined the final application is complete



Table 3-3 at the end of this Module
is an index of the Act